

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- V - :

AFFIRMATION

07 Cr. 877 (LTS)

TARREL GRANT :

Defendant. :

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I, Robert M. Baum, hereby affirm under penalties of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an assistant Federal Defender with the Federal Defenders of New York and was previously assigned to represent defendant Tarrel Grant in this case.

2. I make this declaration in support of Tarrel Grant's motion to suppress physical evidence.

3. All statements herein are made upon information and belief unless otherwise indicated.

4. I have reviewed documents and records provided by the Government and conducted independent investigation into the facts and circumstances surrounding this case.

5. Tarrel Grant is charged in the instant indictment with one count of possession of a firearm after having been previously convicted of a felony. See Indictment, Defense Exhibit A.

6. On August 18, 2007, at approximately 2:00 A.M., Mr. Grant was standing on a public street in the vicinity of White Plains Road and East 215 street in the Bronx, waiting to take a bus home. Grant Affirmation ("Aff.") at ¶ 2.

7. A few feet from where he was standing, Mr. Grant was aware of a plant on a bench, which had been placed there by a person known to him. Aff. ¶¶ 3-4.

8. Police officers in uniform approached Mr. Grant and he told them that the plant belonged to the person he knew, who was standing nearby. Aff. ¶ 6.

9. Mr. Grant had never touched the plant nor had he taken it into his possession at any time. Aff. ¶ 5.

10. Mr. Grant had observed the other individual whom he knew, place it on the bench after having it in his physical possession. Aff. ¶ 5.

11. The other individual came over to where Mr. Grant was standing and told the police that the plant belonged to him and that he had taken the plant from a nearby location on East 215 street. Aff. ¶ 7.

12. The police placed Mr. Grant under arrest for possession of marijuana in a public place. See Complaint ("Compl.") Exhibit B, ¶ 2(d).

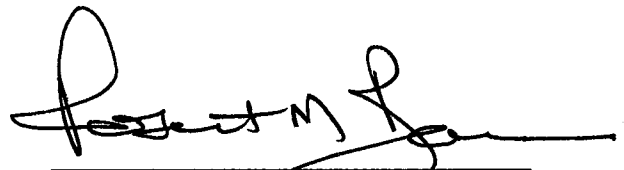
13. In a search following the arrest of Tarrel Grant, the police officers discovered a .25 caliber firearm, four rounds of ammunition and a small quantity of marijuana. Compl. ¶ 3.

14. The officer's observations of a marijuana plant in close proximity to Tarrel Grant, given the statements by the defendant and the person who possessed the plant, are insufficient to provide probable cause for the arrest of Mr. Grant.

17. The subsequent detention and arrest of Mr. Grant were conducted without probable cause. The recovery of any physical evidence were the direct result of the illegal arrest and detention without probable cause.

WHEREFORE, and on the grounds set forth in the attached Memorandum of Law, it is respectfully requested that this Court enter an Order suppressing physical evidence obtained in violation of the Fourth Amendment to the United States Constitution; or in the alternative, grant a hearing on the issues raised, and any further relief as the Court deems just and proper.

Dated: New York, New York
October 12, 2007



ROBERT M. BAUM, ESQ.